

SENATE BILL REPORT

SSB 6349

As Amended by House, March 3, 2010

Title: An act relating to a farm internship program.

Brief Description: Establishing a farm internship program.

Sponsors: Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Ranker, Holmquist, Haugen, Hobbs, Becker, Shin and Roach).

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 1/28/10, 2/02/10 [DPS].

Passed Senate: 2/16/10, 46-0.

Passed House: 3/03/10, 95-2; 96-2 (reconsidered).

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 6349 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Franklin, Honeyford, King and Kline.

Staff: Mac Nicholson (786-7445)

Background: Generally, an individual who acts directly or indirectly in the interest of a for-profit business is considered an employee of that business, and a business that permits an individual to work is considered an employer, subjecting both the employee and employer to a number of state employment laws, including the Minimum Wage Act, the Industrial Insurance Act, the Employment Security Act, and the Industrial Welfare Act. Many of the different employment acts contain exemptions for specific groups of employees and employers. Referring to an individual as an intern or volunteer, or allowing an individual to provide services without compensation, does not exempt the employer or the employee from provisions of the respective acts.

Minimum Wage Act (MWA). The MWA establishes a minimum wage which must be paid to all employees in the state. Under the MWA, an employee is any individual employed by an employer except those specifically excluded in statute. Consequently, any individual who is engaged or permitted to work by an employer is entitled to the state minimum wage. A number of individuals are exempt from the MWA, including certain agricultural employees

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and volunteers for educational, charitable, religious, governmental, and nonprofit organizations.

Industrial Insurance Act. Industrial insurance provides medical and time loss benefits to workers injured in the course of their employment. Industrial insurance coverage is mandatory, and employers that maintain coverage generally cannot be sued for damages when an employee suffers a work-related injury. All employers (except for self-insured employers) must purchase industrial insurance through the Department of Labor and Industries (L&I), and the workers compensation system is funded by premiums collected from employers and employees. Premiums are calculated based on the industry risk classification and the employer's experience rating. Exemptions to mandatory coverage are specified in statute.

Employment Security Act. Under the Employment Security Act, qualified individuals who have lost their job through no fault of their own, or for good cause, can collect unemployment insurance benefits. Benefits are funded by contributions collected from all employers in the state. Exemptions to unemployment insurance coverage are specified in statute, and include an exemption for agricultural labor performed by students.

Industrial Welfare Act (IWA). The IWA regulates hours and conditions of labor and other wage issues not specifically covered by the MWA. The IWA applies to all employers and employees in the state unless specifically exempt. Agricultural workers exempt from unemployment insurance are also exempt from the IWA.

Summary of Substitute Bill: Farm Internships. L&I must provide for the employment of farm interns under special certificates. A farm intern is an individual who provides services to a small farm under a written agreement and primarily as a means of learning about farming practices and farm enterprises. Farms seeking to employ interns must submit an application to L&I that sets forth specific information including a description of the work to be performed, any wages to be paid, and a description of the farm internship program.

A farm internship program is an educational program that provides a curriculum of learning modules and supervised participation in farm work activities designed to teach interns about farming practices and enterprises. Farms eligible to offer farm internship programs must meet specified eligibility criteria.

Prior to the start of any farm internship program, the farm and the intern must execute a written agreement that describes the program offered by the farm, explicitly states that the intern is not entitled to minimum wages, describes the expectations and obligations of the intern and the farm, and describes any wages, room and board, stipends, and other remuneration that will be provided to the intern. A copy of this written agreement must be submitted to L&I prior to the start of any intern program.

Upon receipt of an application, L&I must review the application within 15 days and issue a certificate if it determines the farm is an eligible farm without any serious violations of the MWA or Industrial Insurance Act, that the internship program is reasonably designed to provide the intern with vocational knowledge and skills about farming practices, and that the issuance of a certificate will not create unfair competitive labor cost advantages nor have the

effect of impairing or depressing wage or working standards established for experienced farm workers. A farm may appeal the denial of a certificate.

Farm intern certificates must specify the name the farm, the nature of the program, the authorized wage rate and the period of time during which the rate may be paid, the authorized number of interns, and any room and board and other remuneration provided to the intern.

L&I is given rule-making authority to implement the farm internship program.

Minimum Wage Act. A farm intern providing his or her services under a farm internship program is not considered an employee under the MWA. A farm intern can be paid at subminimum wages only during the effective period of a certificate issued by L&I.

Industrial Insurance. L&I must provide a special risk class or classes for farm interns by rule. Requirements for obtaining a special risk class must be included in the rule.

Unemployment Compensation. Agricultural labor provided by a farm intern under an internship program is not considered employment for unemployment insurance purposes. For farm interns, agricultural labor includes direct local sales of any agricultural or horticultural commodity after its delivery to a terminal market for distribution or consumption.

Industrial Welfare Act. Farm interns providing agricultural labor are exempt from the Industrial Welfare Act.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: Farm interns are beneficial and educational. Interns gain skills that are important to the community. Interns are provided room and board and receive food and stipends from the farms. The bill is proposed in response to L&I audits of small farms and their internship practices. Many organizations promote internships on farms, and farms with interns don't realize they are doing anything wrong. This bill supports the continued growth of the agricultural industry. The art of farming cannot be learned in a classroom; first-hand experience is needed. Individuals want practical experience before committing themselves to a formal agricultural education. This bill is not intended to undermine critical labor laws that protect workers. Interns are under constant supervision and care. The application process in the bill should be streamlined so that only the farm has to apply and be certified to host interns. This bill provides a way for the next generation to learn small farming techniques.

OTHER: There are a few technical issues with the legislation. The bill requires L&I to issue certificates for subminimum wages, but the agreement with the farm and the intern provides that the intern is not entitled to wages; so, the intent of the bill regarding wages is unclear. The bill provides no standards for how L&I is to interpret parts of the legislation. It's unclear whether the discounted farm intern workers compensation rate is to be one classification, or whether it is to be a discounted rate for all the various farm classifications.

Persons Testifying: PRO: Jim Sesby, Heritage Farms; Corinne Logan, Willows Edge Farm; Dylan Johnson, Synergy Farm; Tom Pasma, Double S Quarter Horses; Josh Giuntoli, Washington State Conservation Committee Office of Farmland Preservation; Holli Johnson, Washington State Grange; Scott Dilley, Washington Farm Bureau.

OTHER: Vickie Kennedy, L&I.

House Amendment(s): The House amendment turns the farm internship program into a pilot project that expires December 1, 2011. The pilot project is limited to San Juan and Skagit counties. Small farms participating in the pilot project are limited to three farm interns per year, and farm interns cannot displace experienced farm workers. Prior to employing a farm intern, the farm must submit a statement stating that the farm understands the requirements of the Industrial Welfare Act that apply to farm interns, that the farm must pay workers' compensation premiums, and that the farm's internship certificate may be revoked for noncompliance.

Regarding the intern program, the House amendments provide that the program must be based on the bona fide curriculum of an educational or vocational institution and give L&I the authority to consult with colleges as well as universities and extension programs to assess the program.

The House amendments make farm interns subject to the Industrial Welfare Act by removing language in the underlying legislation that exempted interns.

L&I is given the authority to revoke a farm internship certificate if the farm fails to comply with state labor laws or pay the appropriate workers' compensation premiums.

The House amendments add a reporting requirement on the farm internship pilot program and restrict L&I's rule-making authority to adoption of a special workers' compensation risk class or classes for farm interns.

The House amendments also provide that funds provided for the program must be appropriated from the state General Fund.